

# McNamara Declaration

## Exhibit 139

## Internet Archive Blogs

A blog from the team at archive.org



The Internet's Library  
for 25 years



From Wayback  
to way forward

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### Internet Archive responds: Why we released the National Emergency Library

Posted on March 30, 2020 by [chrisfreeland](#)



Last Tuesday [we launched a National Emergency Library](#)—1.4M digitized books available to users without a waitlist—in response to the rolling wave of school and library closures that remain in place to date. We've received dozens of messages of thanks from teachers and school librarians, who can now help their students access books while their schools, school libraries, and public libraries are closed.

We've been asked why we suspended waitlists. On March 17, the American Library Association Executive Board took the extraordinary step to [recommend that the nation's libraries close](#) in response to the COVID-19 outbreak. In doing so, for the first time in history, the entirety of the nation's print collection housed in libraries is now unavailable, locked away indefinitely behind closed doors.

This is a tremendous and historic outage. According to IMLS [FY17 Public Libraries survey](#) (the last fiscal year for which data is publicly available), in FY17 there were more than 716 million physical books in US public libraries. Using the same data, which shows a 2-3% decline in collection holdings per year, we can estimate that public libraries have approximately 650 million books on their shelves in 2020. Right now, today, there are 650 million books that tax-paying citizens have paid to access that are sitting on shelves in closed libraries, inaccessible to them. And that's just in public libraries.

And so, to meet this unprecedented need at a scale never before seen, we suspended waitlists on our lending collection. As we anticipated, critics including the Authors Guild and the Association of American Publishers have released statements ([here](#) and [here](#)) condemning the National Emergency Library and the Internet Archive. Both statements contain falsehoods that are being spread widely online. To counter the misinformation, we are addressing the most egregious points here and have also [updated our FAQs](#).



#### Recent Posts

- [Building a Better Internet: Internet Archive Convenes DC Workshop](#)
- [July Book Talk: The Library: A Fragile History](#)
- [Save our Safe Harbor, continued: Internet Archive Supports Libraries and Nonprofits in Submission to the Copyright Office](#)
- [June Book Talk: The Catalogue of Shipwrecked Books](#)
- [GITCOIN Grants: Donate a Few Tokens, Defend a Public Treasure](#)

#### Recent Comments

- [Superman](#) on [July Book Talk: The Library: A Fragile History](#)
- [aho](#) on [Building a Better Internet: Internet Archive Convenes DC Workshop](#)
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**One of the statements suggests you've acquired your books illegally. Is that true?**

No. The books in the National Emergency Library have been acquired through purchase or donation, just like a traditional library. The Internet Archive preserves and digitizes the books it owns and makes those scans available for users to borrow online, normally one at a time. That borrowing threshold has been suspended through June 30, 2020, or the end of the US national emergency.

**Is the Internet Archive a library?**

Yes. The Internet Archive is a 501(c)(3) non-profit public charity and is recognized as a library by the government.

**What is the legal basis for Internet Archive's digital lending during normal times?**

The concept and practice of [controlled digital lending](#) (CDL) has been around for about a decade. It is a lend-like-print system where the library loans out a digital version of a book it owns to one reader at a time, using the same technical protections that publishers use to prevent further redistribution. The legal doctrine underlying this system is fair use, as explained in the [Position Statement](#) on Controlled Digital Lending.

**Does CDL violate federal law? What about appellate rulings?**

No, and many copyright experts [agree](#). CDL relies on a set of careful controls that are designed to mimic the traditional lending model of libraries. To quote from the [White Paper on Controlled Digital Lending of Library Books](#):

"Our principal legal argument for controlled digital lending is that fair use—an "equitable rule of reason"—permits libraries to do online what they have always done with physical collections under the first sale doctrine: lend books. The first sale doctrine, codified in Section 109 of the Copyright Act, provides that anyone who legally acquires a copyrighted work from the copyright holder receives the right to sell, display, or otherwise dispose of that particular copy, notwithstanding the interests of the copyright owner. This is how libraries loan books. Additionally, fair use ultimately asks, "whether the copyright law's goal of promoting the Progress of Science and useful Arts would be better served by allowing the use than by preventing it." In this case we believe it would be. Controlled digital lending as we conceive it is premised on the idea that libraries can embrace their traditional lending role to the digital environment. The system we propose maintains the market balance long-recognized by the courts and Congress as between rightsholders and libraries, and makes it possible for libraries to fulfill their "vital function in society" by enabling the lending of books to benefit the general learning, research, and intellectual enrichment of readers by allowing them limited and controlled digital access to materials online."

Some have argued that the [ReDigi case](#) that held that commercially reselling iTunes music files is not a fair use "precludes" CDL. This is not true, and [others have argued](#) that this case actually makes the fair use case for CDL stronger.

**How is the National Emergency Library different from the Internet Archive's normal digital lending?**

Because libraries around the country and globe are closed due to the COVID-19 pandemic, Internet Archive has suspended our waitlists temporarily. This means that multiple readers can access a digital book simultaneously, yet still by borrowing the book, meaning that it is returned after 2 weeks and cannot be redistributed.

**Is the Internet Archive making these books available without restriction?**

No. Readers who borrow a book from the National Emergency Library get it for only two weeks, and their access is disabled unless they check it out again. Internet Archive also uses the same technical protections that publishers use on their ebook offerings in order to prevent additional copies from being made or redistributed.

**What about those who say we're stealing from authors & publishers?**

Libraries buy books or get them from donations and lend them out. This has been true and legal for centuries. The idea that this is stealing fundamentally misunderstands the role of libraries in the information ecosystem. As Professor Ariel Katz, in his paper [Copyright, Exhaustion, and the Role of Libraries in the Ecosystem of Knowledge](#) explains:

"Historically, libraries predate copyright, and the institutional role of libraries and institutions of higher learning in the "promotion of science" and the "encouragement of learning" was acknowledged before legislators decided to grant authors exclusive rights in their writings. The historical precedence of libraries and the legal recognition of their public function cannot determine every contemporary copyright question, but this historical fact is not devoid of legal consequence... As long as the copyright ecosystem has a public purpose, then some of the functions that libraries perform are

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not only fundamental but also indispensable for attaining this purpose. Therefore, the legal rules ... that allow libraries to perform these functions remain, and will continue to be, as integral to the copyright system as the copyright itself."

**Do libraries have to ask authors or publishers to digitize their books?**

No. Digitizing books to make accessible copies available to the visually impaired is explicitly allowed under [17 USC 121](#) in the US and around the world under the [Marrakesh Treaty](#). Further, [US courts](#) have held that it is fair use for libraries to digitize books for various additional purposes.

**Have authors opted out?**

Yes, we've had authors opt out. We anticipated that would happen as well; in fact, we launched with clear instructions on [how to opt out](#) because we understand that authors and creators have been impacted by the same global pandemic that has shuttered libraries and left students without access to print books. Our takedowns are completed quickly and the submitter is notified via email.

**Doesn't my local library already provide access to all of these books?**

No. The Internet Archive has focused our collecting on books published between the 1920s and early 2000s, the vast majority of which don't have a commercially available ebook. Our collection priorities have focused on the broad range of library books to support education and scholarship and have not focused on the latest best sellers that would be featured in a bookstore.

Further, there are approximately 650 million books in public libraries that are locked away and inaccessible during closures related to COVID-19. Many of these are print books that don't have an ebook equivalent except for the version we've scanned. For those books, the only way for a patron to access them while their library is closed is through our scanned copy.

**I've looked at the books and they're just images of the pages. I get better ebooks from my public library.**

Yes, you do. The Internet Archive takes a picture of each page of its books, and then makes those page images available in an online book reader and encrypted PDFs. We also make encrypted EPUBs available, but they are based on uncorrected OCR, which has errors. The experience is inferior to what you've become accustomed to with Kindle devices. We are making an accessible facsimile of the printed book available to users, not a high quality EPUB like you would find with a modern ebook.

**What will happen after June 30 or the end of the US national emergency?**

Waitlists will be suspended through June 30, 2020, or the end of the US national emergency, whichever is later. After that, the waitlists will be reimplemented thus limiting the number of borrowable copies to those physical books owned and not being lent.

Posted in [Announcements](#), [Books Archive](#), [Lending Books](#), [News](#) | Tagged [NEL](#) | 20 Replies



**About chrisfreeland**

Chris Freeland is the Director of Open Libraries at Internet Archive.

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**20 thoughts on “Internet Archive responds: Why we released the National Emergency Library”**

Pingback: [Announcing a National Emergency Library to Provide Digitized Books to Students and the Public](#) | [Internet Archive Blogs](#)

Pingback: [1,426,434 Million Books: The Internet Archive Launches the “National Emergency Library to Provide Digitized Books to Students and the Public”](#) | [LJ infoDOCKET](#)

 **BlindWanderer**  
March 31, 2020 at 1:38 am

I have no problem with this. Keep up the good work.



**Pearce Barry**  
March 31, 2020 at 2:19 am

Very well written statement. Fight the good fight, y'all.



**Corinne**  
March 31, 2020 at 5:35 pm

Thank you!



**Reagan Wiles**  
March 31, 2020 at 5:46 pm

Thank you. I have found and borrowed books on Internet Archive that are prohibitively expensive and except one buys them are difficult to locate even in university libraries. Thank you for this valuable public service!



**Bettye W. Harwell**  
March 31, 2020 at 5:47 pm

I discovered Internet Archives when as an artist, I needed historical information in a readily accessible form. The research I was able to find was invaluable. My first WordPress blog was based on an Al Jolson sign off of his radio program which was so memorable from my childhood.

I often recommend your work to others. I hope the negative comments do not limit your work.

Pingback: [The Internet Archive's National Emergency Library offers 1.4 million free ebooks - GadgetPark Co](https://www.gadgetpark.co/the-internet-archives-national-emergency-library-offers-1-4-million-free-ebooks/)



**Roland Paingaud**  
March 31, 2020 at 6:00 pm

Thank you so much.



**CS Slama**  
March 31, 2020 at 6:05 pm

Keep up the amazing work! I have long maintained that the internet archive is the internet best-kept secret, and I hope that through this national Emergency Library program it becomes better known and prompts people to become lifelong supporters. Thank you for bringing us light during a dark time. Fantastic initiative! Kudos to you and the entire team



**Barbara Waldbillig**  
March 31, 2020 at 6:06 pm

Having read all the books I had on hand & still in self-isolation in my tiny apt in BC Canada; you have saved my mental health by your generous offer!



**آهنج**  
March 31, 2020 at 9:33 pm

It was a very good initiative . Thank you



**آهنج**  
March 31, 2020 at 9:35 pm

It was a very good initiative  
Thank you.



**Daniel**  
March 31, 2020 at 10:39 pm

Who do these “Authors Guild” and “Association of American Publishers” represent except themselves? The consistency with which they undermine the best interest of authors, who they supposedly support, is baffling. I see similar situations with associations in the music, film, and software industry, and I’m not sure that them being run by technology- and law-illiterate octogenarians is sufficient explanation for their insistent misinformation campaigns.

Although you have to hand it to them, it’s a pretty impressive achievement to already spread falsehoods and undermine your own argument in the very first sentence of your statements.

AAP: “We are stunned by the Internet Archive’s aggressive, unlawful, and opportunistic attack [...]”

Given that it’s a not-for-profit organization that will not benefit from increased traffic or lending either way, what exactly do they believe this “opportunity”, that the opportunistic Internet Archive exploits, to be? Looking at the summary box of Wikipedia’s article on the Internet Archive would have been enough to make the AAP realize that the fundamentally misunderstood what the Internet Archive is.

AG: “The Authors Guild is appalled by the Internet Archive’s (IA) announcement that it is now making millions of in-copyright books freely available online without restriction [...]”

Without restriction? Sorry, wrong again. Reading the official statement by the Internet Archive about the initiative that the AG pretends to be upset about would have been enough to show them that they entirely misunderstood the lending system of the Internet Archive. Or hey, how about actually trying to lend a book first? Or does an organization that arrogates to call itself the “Authors Guild” not think it would be prudent to first try to understand the thing you’re going to write a sulky reaction to?

I’m really on the fence if the disinformation spreading from associations like these is based on actual lack of knowledge, or if they somehow benefit from people believing their made-up allegations. Two groups of people who clearly don’t benefit are authors and readers.

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Pingback: [Internet Archives national emergency library has over a million books to read right now – CNET - Carl Earley](#)



**Adam**

April 1, 2020 at 2:50 am

I’m pretty shocked that the book copyright industry are STILL wanting to ban libraries from using “controlled digital lending”, when this entire thing works almost identical to physical book borrowing. The only difference between CDL and real book borrowing is that it is in the digital world.

I mean, the arguments of DRM being able to be circumvented obtained from digital libraries (and the arguments saying that libraries “allowed” piracy), well, this is the same as in this scenario where a person borrows a real book, takes it home and prints copies of it. Therefore, makes no sense in trying to ban CDL just because it makes it possible to pirate books when it is also possible to pirate physical books.

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Pingback: [Announcing a National Emergency Library to Provide Digitized Books to Students and the Public – DePaul COE Doctoral Program](#)

Pingback: [Free Educational and Scholarly Resources for Grad Students and Other Humans – Your Grad Life](#)



**Pinta A.**

April 1, 2020 at 7:32 pm

[quote]

Who do these “Authors Guild” and “Association of American Publishers” represent except themselves? The consistency with which they undermine the best interest of authors, who they supposedly support, is baffling.

[/quote]

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Internet Archive responds: Why we released the National Emergency Library - Internet Archive Blogs  
<https://blog.archive.org/2020/03/30/internet-archive-responds-why-we-released-the-national-emergency-library/>

I wonder if the fundamental problem is that those organizations view the the IA making books available as some sort of zero-sum game whereby the IA making a book available to view means that an author ineluctably loses out?

In my own case, if I like a particular book I have found on the IA, I will seek a paper copy of it. However, that paper copy will, more often than not, be a used one. While this means the publishers did not make any money off of me, it also means the authors are none the poorer for it.

I suspect that the IA \*does\*, ultimately, help to drive book sales by serving as a venue where people can read older books on a risk-free basis and that their doing so prompts them to seek out other, newer books by the same authors whose older works are available on IA.

(Would it be possible for a supporter of IA to design a survey, say, asking account holders how using the IA regularly has influenced their book purchases?)

What I am trying to get at is that there might be a way for groups like the AG to use the IA to further their own goals (e.g. selling more books), but their knee-jerk condemnation of IA has caused them to overlook it because they simply haven't \*thought\* about it enough.



ابراهيم نوا

April 1, 2020 at 8:23 pm

I have found and borrowed books on Internet Archive that are prohibitively expensive and except one buys them are difficult to locate even in university libraries. Thank you for this valuable public service!

Comments are closed.

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